



BT EQUIPMENT LEASING, INC.

A SUBSIDIARY OF BANKERS TRUST COMPANY

280 PARK AVENUE, NEW YORK, N. Y. 10017

Tel. 212/692-2041

REGISTERED MAIL

10499
RECORDATION NO. Filed 1425

June 7, 1979

JUN 13 1979 - 9 50 PM

INTERSTATE COMMERCE COMMISSION

Secretary
Interstate Commerce Commission
Washington, D.C.

Dear Sir:

In accordance with the provisions of Section 20C of the Interstate Commerce Act and the Rules and Regulations approved and prescribed by the Interstate Commerce Commission pursuant thereto, there is herewith submitted for filing and recordation three executed counterparts of an Equipment Lease Agreement ("Lease") dated as of May 18, 1979 between BT Equipment Leasing, Inc., Lessor, whose address is 280 Park Avenue, 17W, New York, New York 10017, and Louisville and Nashville Railroad Company, 908 W. Broadway, Louisville, Kentucky 40201.

The Lease covers 50 new tri-level Auto Racks, Serial Numbers 67181 through 67280 inclusive, manufactured by Whitehead and Kales. The Auto Racks bear Lessee's Road Numbers 1871 through 1920 inclusive.

Enclosed for payment of the filing fee is our check in the amount of \$50.00.

You are requested to return one original document with filing data noted thereon to:

BT Equipment Leasing, Inc.
280 Park Avenue - 17W
New York, New York 10017

Thank you for your cooperation.

Very truly yours,

Stephen Auster

Stephen Auster
Assistant Secretary

SA:ef
Enclosures

FEE OPERATION BR.
I.C.C.

JUN 13 9 47 AM '79

RECEIVED

Interstate Commerce Commission
Washington, D.C. 20423

6/15/79

OFFICE OF THE SECRETARY

Stephen Auster
Assistant Secretary
BT Equipment Leasing, Inc.
280 Park Avenue
New York, N.Y. 10017

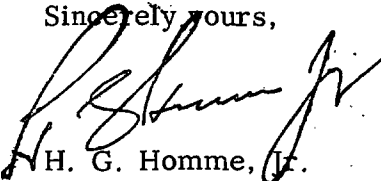
Dear

Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C.

11303, on **6/13/79** at **9:50am**, and assigned recordation number(s). **10499**

Sincerely yours,


H. G. Homme, Jr.
Secretary

Enclosure(s)

SE-30
(3/79)



**EQUIPMENT LEASE
(Security Agreement)**

10499
RECORDATION NO. Filed 1425

JUN 13 1979-9 50 PM

EQUIPMENT LEASE (Security Agreement) dated as of INTERSTATE COMMERCE COMMISSION, 19 79
(the "Lease"), between BT Equipment Leasing, Inc. a New York
corporation, having an office at 280 Park Avenue, New York, NY 10017
("Lessor"), and Louisville & Nashville Railroad Company
a Kentucky corpo-
ration, having an office at 908 West Broadway, Louisville, Kentucky 40203
("Lessee"):

WITNESSETH

1. Lessor hereby leases to Lessee and Lessee hereby hires and takes from Lessor, the following described personal property (the "Equipment"):

DESCRIPTION

Qty.	Description	Lessee's Road Nos.
50	Whitehead and Kales fully enclosed tri-level auto racks model No. AB-15153-FN with radial end doors, model 8004-N, installed on new 89'4" flush deck hydraulic cushioned TTX model LH-21 flat cars with ratchet LO-TY carriages, A-234-786 and chain assemblies, C-504-308. Serial numbers 67181-67280, inclusive.	1871-1920 inclusive

The location of the Equipment shall be used only within the continental United States
(the "Location").

2. **Term.** The basic term of this Lease is 8 years and 0 months, commencing on the date (the "Commencement Date") on which all of the Equipment is delivered to and accepted by the Lessee.

3. Rent; Interim Rent; Net Lease.

(a) Lessee shall pay Lessor rent for the basic term in 32 equal quarterly payments in arrears, each of which shall be in an amount equal to 4.863 % of the Acquisition Cost (amount paid by Lessor in respect of the purchase price of the Equipment including taxes, duties, freight and installation but in no event to exceed the sum of \$ 1,875,000.) as follows: (i) if payable in advance, on the Commencement Date and on each periodic payment date thereafter as herein provided; or (ii) if payable in arrears, on the next periodic payment date immediately succeeding the Commencement Date and on each periodic payment date thereafter as herein provided. The rental payment dates as fixed above are herein called the "due dates" and Lessee shall pay all rentals on the due dates. On any installment of rent the payment of which is more than 7 days overdue, Lessee shall also pay Lessor at the then maximum permissible rate of interest.

~~(b) Upon signing this Lease, Lessor shall pay xxxxxxxx % of the Acquisition Cost constituting payment in advance of the xxxxxxxx payment(s) of rent stated above.~~

(c) In the event Lessor shall pay a deposit or part payment(s) in respect of the Acquisition Cost, Lessee shall pay Lessor as Interim Rent on a monthly basis, an amount equal to .0333 % per day of the total of such payment(s), beginning with the date of any such payment, and ending on the Commencement Date.

(d) Lessee's obligation to make rent payments and any other payments due pursuant to this Lease shall be absolute and unconditional. Lessee hereby waives, to the extent permitted by applicable law, any and all rights which it may now have or which at anytime hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease except in accordance with the express terms hereof. This Lease is a net lease and the rent shall be net to Lessor, and all costs, expenses and obligations of every kind and nature relating to the Equipment shall be paid by Lessee except as otherwise expressly provided herein.

4. Title of Lessor; Possession and Use of the Equipment; Subletting, Liens, Assignment, etc. Prohibited. Title to the Equipment shall at all times remain in Lessor. Lessee, at its own cost and expense, shall protect and defend the title of Lessor. Unless an Event of Default shall have occurred and be continuing, Lessee may hold, possess and use the Equipment in the ordinary course of the regular business conducted by Lessee. The Equipment shall be located at the Location and shall not be removed therefrom without the prior written consent of Lessor. Lessee shall not (i) sublease, ~~part with possession of~~, or otherwise transfer or dispose of, any Equipment; (ii) contract, create, incur, assume or suffer to exist any claim, mortgage, pledge, lien, security interest or other charge or encumbrance of any kind upon or with respect to any Equipment or any of its rights under this Lease; or (iii) sell, assign, transfer or otherwise dispose of any of its rights under this Lease. Lessee shall comply fully with all statutes, ordinances and regulations relating to the use and operation of the Equipment and with all conditions and provisions of any policies of insurance relating to the Equipment and, if such compliance requires changes or additions to be made on or to any Equipment, such changes and additions shall be made by Lessee at its own cost and expense.

5. Surrender of the Equipment. Upon the termination of the Lease at the end of the term hereof, Lessee shall surrender the Equipment to Lessor at the Location in the same operating order, repair, condition and appearance as originally delivered to Lessee, reasonable wear and tear excepted. Lessee shall cooperate with Lessor in effecting removal of such Equipment from the Location and, pending such removal, Lessee shall allow Lessor to store such Equipment on Lessee's premises for a reasonable period of time in a manner satisfactory to Lessor, at no expense to Lessor. Lessor, upon the termination of this Lease, shall have the right, at its sole option, to abandon all or any part of the Equipment while in the possession of Lessee and, upon notice to Lessee of the exercise of such option, Lessor shall not thereafter have any responsibility or liability for such Equipment or its removal.

6. Events of Default. The following events (each an "Event of Default") shall constitute Events of Default: (a) Lessee shall fail to make any payment of rent or of any other sum payable by Lessee hereunder for 15 days after the same shall become due; (b) Lessee shall (or shall attempt to) sell, remove, encumber, sublet or assign the Equipment without the written permission of Lessor; (c) Lessee shall fail to perform or observe any other covenant, condition or agreement to be performed or observed by it hereunder and such failure shall continue unremedied for a period of 15 days after written notice thereof by Lessor; (d) Lessee shall suspend or terminate the operations of its business; (e) Lessee shall make an assignment for the benefit of creditors; (f) a trustee or a receiver shall be appointed for Lessee or for a substantial part of its property with or without its consent; (g) bankruptcy, reorganization or insolvency proceedings shall be instituted by or against Lessee; (h) there shall occur an entry of judgment against Lessee or issuance of an order of attachment or execution as to Lessee's property.

7. Remedies. Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, Lessor may, at its option, declare this Lease to be in default and Lessor shall have the right, in its sole discretion, but shall not be obligated, to exercise any one or more of the following remedies: (A) to terminate this Lease upon 5 days' written notice to Lessee whereupon Lessee shall forthwith pay to Lessor as liquidated damages all rent due (as of the due date next following termination) and unpaid plus an amount equal to (i) the excess of the sum of (a) the aggregate rent payable for the balance of the term of this Lease and (b) an amount equal to 15% of the Acquisition Cost over the fair market sales value of the Equipment as of the date of such termination, plus (ii) interest as herein provided; (B) to enter upon premises where any Equipment may be located and to take possession thereof without demand or notice, without court order or process of law, and without liability to Lessee for and by reason of such entry or taking possession, whether for the restoration of damage to property caused by such taking or otherwise; (C) to sell all or any Equipment at public or private sale upon such terms as Lessor deems advisable, and in the event of such sale Lessor shall, in addition to all other rights and remedies hereunder, be entitled to retain as liquidated damages the net proceeds thereof and to recover from Lessee the amounts, if any, due as provided in subdivision (A) of this Section, for which purposes, if such sale occurs within 60 days after Lessor has declared this Lease to be in default, the net sales price realized at such sale shall be deemed the fair market sales value of the Equipment; (D) to sue for and recover all rents and other amounts then due or thereafter accruing under this Lease; (E) to pursue any other remedy now or hereafter existing at law or in equity. Lessee shall pay Lessor all costs and expenses, including reasonable attorneys' fees, incurred by Lessor in exercising any of its rights or remedies hereunder. No remedy provided herein is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity. No waiver by Lessor of any Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default.

8. Lessee's Inspection; Conclusive Presumptions. Lessee shall inspect the Equipment within 5 business days after its arrival at the Location (or other premises designated by Lessee) and, unless within said 5 business days Lessee gives written notice to Lessor, specifying any defect in or other proper objection to any Equipment, Lessee agrees that it shall be conclusively presumed, as between Lessor and Lessee, that Lessee has fully inspected the Equipment, that the Equipment is in full compliance with the terms of this Lease and in good condition and repair, and that Lessee is satisfied with and has accepted the Equipment. In case Lessee gives such written notice with respect to any item of Equipment, Lessee shall on demand by Lessor, pay Lessor any amounts theretofore paid or owing by Lessor in respect of the purchase of such item of Equipment. Upon such payment Lessee shall be subrogated to Lessor's claims, if any, against the manufacturer or other supplier thereof and Lessee shall become entitled to such item, as-is-where-is without warranty, express or implied, by Lessor with respect to any matter whatsoever, and Lessee shall indemnify and save Lessor harmless from any and all liability to the manufacturer or other supplier thereof. Where the Equipment is purchased by Lessor directly from Lessee or its

affiliates, delivery and unconditional acceptance shall be conclusively presumed and acknowledged as of the time of execution of this Lease.

9. **Notices.** All notices, requests, demands or other communications to or upon the respective parties hereto shall be deemed to have been given or made when deposited in the mails, postage prepaid, addressed to such party at the address specified above or to such other address as the parties shall from time to time designate by notice.

10. **Assignment by Lessor.** This Lease, title to the Equipment and/or any rents or other sums due or to become due hereunder may be transferred or assigned by Lessor without prior notice to or the consent of Lessee, and in such event Lessor's transferee or assignee shall have all the rights, powers, privileges and remedies of Lessor under this Lease.

11. **Representations, Warranties and Covenants.** Lessee represents and warrants that this Lease has been duly authorized, executed and delivered by Lessee, is a valid and binding agreement of Lessee and does not contravene any law, regulation, agreement or instrument applicable to Lessee. This Lease: (a) shall constitute the entire agreement between the parties and no term or provision hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by Lessor and Lessee; (b) shall constitute an agreement of lease and nothing herein shall be construed as conveying to Lessee any right, title or interest in the Equipment except as a lessee only; (c) shall be binding upon and inure to the benefit of Lessor and Lessee and their successors and permitted assigns. Lessee agrees to furnish its annual financial statements certified by independent certified public accountants and such interim statements as Lessor may require.

12. **Loss of or Damage to the Equipment.** Lessee shall notify Lessor immediately of any loss, theft, destruction, seizure, confiscation, rendering unfit for use or damage of or to the Equipment, and at Lessor's option shall: (i) place such Equipment in good repair, condition and working order; or (ii) replace such Equipment with like equipment in good repair, condition and working order and furnish to Lessor any necessary documents vesting good and marketable title thereto in Lessor unencumbered by any lien or security interest; or (iii) in the event Lessor determines that the Equipment is lost, stolen, destroyed or damaged beyond repair, pay to Lessor in cash within 10 days of notice of such determination the Loss Value thereof which shall be an amount equal to: (a) the sum of all rent and other amounts due and owing for such Equipment at the time of such payment; plus (b) the then present value of all rent and other amounts to become payable by Lessee to Lessor with respect to the Equipment during the remaining basic term of this Lease, discounted at 18% per annum to the date of such payment; plus (c) the Lessee's Option Price as defined in this Lease. Upon such full payment, Lessee shall become the owner of the Equipment and this Lease shall terminate.

13. **Disclaimer of Warranties.** LESSOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE CONDITION, QUALITY, FITNESS FOR USE OR FOR A PARTICULAR PURPOSE, OPERATION, USE OR PERFORMANCE OF ANY EQUIPMENT OR ANY OTHER REPRESENTATION OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT. Nothing contained in this Section shall be deemed to limit Lessee from availing itself of any representations, warranties or agreements of any manufacturer of the Equipment, except as otherwise specifically provided herein. Lessor shall have no responsibility or liability to Lessee or any other person occasioned by any cause, encumbrance or event of whatsoever nature, including but not limited to any of the following: (i) failure of or delay in delivery, delivery to the wrong place, delivery of improper Equipment or property other than the Equipment, damage to the Equipment, governmental regulations, strike, embargo or any other cause, circumstance or event, whether of like or unlike nature; (ii) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Equipment or by any inadequacy thereof or deficiency or defect therein or by any other circumstance in connection therewith; (iii) the use, operation or performance of any Equipment or any risk relating thereto; (iv) any interruption of service, loss of business or anticipatory profits or consequential damages, or (v) the delivery, installation, erection, testing, programming, adjusting, operation, servicing, maintenance, repair, improvement or replacement of any Equipment.

14. **Improvement and Repair of the Equipment; Insurance.** Lessee shall keep the Equipment in good repair, condition and working order and shall furnish any and all labor, parts and other servicing required for that purpose. Except as required by Section 12 above, Lessee shall not make any material alterations to the Equipment without the prior written consent of Lessor. All parts, attachments and accessories at any time made to or placed upon any Equipment and all replacements for any Equipment shall immediately become the property of Lessor and shall be deemed to be incorporated in the Equipment and subject to the terms and provisions of this Lease as if originally leased hereunder.

~~Lessee shall keep the Equipment in good repair, condition and working order and shall furnish any and all labor, parts and other servicing required for that purpose. Except as required by Section 12 above, Lessee shall not make any material alterations to the Equipment without the prior written consent of Lessor. All parts, attachments and accessories at any time made to or placed upon any Equipment and all replacements for any Equipment shall immediately become the property of Lessor and shall be deemed to be incorporated in the Equipment and subject to the terms and provisions of this Lease as if originally leased hereunder. Lessee shall keep the Equipment in good repair, condition and working order and shall furnish any and all labor, parts and other servicing required for that purpose. Except as required by Section 12 above, Lessee shall not make any material alterations to the Equipment without the prior written consent of Lessor. All parts, attachments and accessories at any time made to or placed upon any Equipment and all replacements for any Equipment shall immediately become the property of Lessor and shall be deemed to be incorporated in the Equipment and subject to the terms and provisions of this Lease as if originally leased hereunder. Lessee shall keep the Equipment in good repair, condition and working order and shall furnish any and all labor, parts and other servicing required for that purpose. Except as required by Section 12 above, Lessee shall not make any material alterations to the Equipment without the prior written consent of Lessor. All parts, attachments and accessories at any time made to or placed upon any Equipment and all replacements for any Equipment shall immediately become the property of Lessor and shall be deemed to be incorporated in the Equipment and subject to the terms and provisions of this Lease as if originally leased hereunder.~~

15. **Taxes, Indemnification and Expenses.** Lessee shall indemnify, protect, save and keep harmless Lessor from any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements of whatsoever kind and nature, including (without limitation) legal fees and expenses, imposed on, incurred by or asserted against Lessor in any way relating to or arising out of this Lease or the Equipment. Lessee shall file all required reports, including (without limitation) *ad valorem*

property reports, and pay all license fees, registration fees, charges and taxes (federal, state and local) which may now or hereafter be imposed upon the ownership, leasing, renting, sale, possession or use of the Equipment, excluding, however, all taxes on or measured by Lessor's net income. Lessee shall notify Lessor promptly in writing of all such filings and payments. The indemnities contained in this Section shall (x) apply equally to any Equipment not yet delivered hereunder; and (y) continue in full force and effect notwithstanding the expiration or other termination of this Lease. For the purpose of this Section, the term "Lessor" shall include its directors, officers, and employees, any agents acting for it or them and its successors and assigns.

16. Personal Property, Inspection. The Equipment is and shall remain personal property irrespective of its use or manner of attachment to real property. At all reasonable times Lessor or its authorized representatives may inspect any Equipment.

17. Further Assurances. Lessee, at its own expense, will promptly and duly execute and deliver to Lessor such further documents and assurances, and take such further action as may be necessary or advisable or as Lessor may from time to time reasonably request in order more effectively to carry out the intent and purpose of this Lease and to establish and protect Lessor's title to the Equipment and the ownership rights and remedies created or intended to be created in favor of Lessor hereunder. Lessee hereby irrevocably authorizes Lessor to file at any time and from time to time without Lessee's signature one or more Financing Statements or Continuation Statements indicating Lessor's ownership interest in the Equipment.

18. Early Termination Due to Economic Obsolescence. Provided that no Event of Default, or any other event which with the giving of notice or the lapse of time would constitute an Event of Default, shall have occurred and be continuing, Lessee shall have the option, upon declaration and demonstration of economic obsolescence, to terminate this Lease upon not less than thirty days prior written notice to Lessor by paying to Lessor in cash an early termination payment consisting of an amount equal to: (a) the sum of all rent and other amounts due and owing for such Equipment at the time of such payment; plus (b) the then present value of all rent and other amounts to become payable by Lessee to Lessor with respect to the Equipment during the remaining basic term of this Lease, discounted at 4% per annum to the date of such payment; plus (c) the Lessee's Option Price as defined in this Lease. Upon such full payment, Lessee shall become the owner of the Equipment and this Lease shall terminate.

19. Purchase Options. Notwithstanding the provisions of Sections 5 and 11 of this Lease and provided this Lease has not been earlier terminated and Lessee is not in default hereunder, at the expiration of the basic term, Lessee, upon 30 days written notice to Lessor prior to such expiration, shall have the right, at Lessee's option, to purchase the Equipment for cash at a price equal to \$1.00 ~~% of the Acquisition Cost~~ (the "Lessee's Option Price"). In the event Lessee fails to exercise this option to purchase the Equipment, Lessor shall have the right prior to the expiration of the basic term of this Lease, at Lessor's option, to offer the Equipment to Lessee at a price equal to \$1.00 ~~% of the Acquisition Cost~~ (the "Lessor's Option Price") and Lessee shall have the obligation to purchase the Equipment as-is-where-is for the Lessor's Option Price in cash.

20. Severability. If a provision hereof or any remedy herein provided for be invalid under any applicable law, such provision shall be inapplicable and deemed omitted but the remaining provisions hereof, including the remaining default remedies, shall be given effect in accordance with the manifest intent hereof.

21. Execution; Laws Governing. This Lease shall be binding when accepted by Lessor at its offices in New York ~~New York~~, and, except for local recording acts, shall be governed by and construed in accordance with the laws of the State of New York, including all matters of construction, validity and performance.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease to be duly executed as of the date first above written.

LESSOR

BT EQUIPMENT LEASING, INC.
By Stephen Amos
ASSISTANT SECRETARY Title

LESSEE

LOUISVILLE & NASHVILLE RAILROAD COMPANY
By D. J. Watkins
Asst. Vice President Title